

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

SEP 29 1999

IN THE MATTER OF:	)	Docket No. 5-CAA-99-039
	)	K-T Corporation
K-T Corporation	)	Proceeding to Assess an
850 Elston Drive	)	Administrative Penalty
Shelbyville, Indiana	)	under Section 113(d) of the
	)	Clean Air Act,
	)	42 U.S.C. § 7413(d)
Respondent.	)	

**Consent Agreement and Final Order**

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).
2. On September 24, 1999, EPA filed the complaint in this action against Respondent K-T Corporation (KT). The complaint alleges that KT violated Section 112 of the Act, 42 U.S.C. § 7412, and 40 C.F.R. Part 63, Subpart T at its facility in Shelbyville, Indiana (Facility).

**Stipulations**

3. KT admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

4. KT waives its right to contest the allegations in the complaint, and waives its right to appeal pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).
5. KT certifies that it is complying fully with 40 C.F.R. §§ 60.463 - 469.
6. The parties consent to the terms of this consent agreement and final order (CAFO).
7. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

#### **Civil Penalty**

8. In consideration of KT's proposal to perform a Supplemental Environmental Project (SEP), EPA agrees to mitigate the proposed penalty of \$87,150 to \$21,787.50.
9. KT must pay the \$21,787.50 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.
10. KT must send the check to:  
U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673
11. A transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on

the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Steven J. Murawski [ORC attorney], (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3509

12. This civil penalty is not deductible for federal tax purposes.
13. If KT does not timely pay the civil penalty or any stipulated penalties due pursuant to paragraph 28 below, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
14. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2). KT will pay a \$15 handling charge

each month that any portion of the penalty is more than 30 days past due. KT will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C.

§ 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

#### **Supplemental Environmental Project**

15. KT must complete a supplemental environmental project (SEP) designed to protect the environment and public health by eliminating the use of perchloroethylene, one of the more regulated Hazardous Air Pollutants (HAPs), in the old halogenated cleaning machines at its Facility during the term of this CAFO.
16. At its Shelbyville facility, KT must complete the SEP within two hundred and seventy (270) days of the effective date of this CAFO as follows:
  - a. Complete the SEP as described in this Section;
  - b. Purchase the new aqueous-based cleaning system described in Attachment A (KT Corporation Proposed Aqueous Alkaline Spray Wash System Description);
  - c. Complete the fabrication and installation of the Aqueous System as described Attachment B (Schedule for Installation of Aqueous Cleaning Spray Wash System);
  - d. Complete training of employees who will operate or inspect the Aqueous System;
  - e. Complete testing the Aqueous System;
  - f. Begin Operating the Aqueous System; and

- g. Eliminate the use of perchloroethylene in the old halogenated cleaning machine at its Facility during the term of this CAFO.
- 17. KT must spend at least \$350,000 to initially purchase, install and begin operation of the Aqueous System.
- 18. In the Aqueous System, KT must not use any substance in such quantity and concentration that causes the Aqueous System to meet the applicability provisions of 40 C.F.R. Part 63, Subpart T (National Emission Standards for Halogenated Solvent Cleaning). For any substance used in the Aqueous System, KT must use material data sheets to determine the substance's toxic and hazardous characteristics.
- 19. KT must continue to use the Aqueous System as its cleaning process following installation of the Aqueous System and shall not reinstate the use of perchloroethylene in the cleaning process at the Facility at any time during the term of this CAFO.
- 20. KT certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. KT further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.
- 21. EPA may inspect the facility at any time to monitor KT's compliance with this CAFO's SEP requirements.

22. KT must maintain copies of the underlying research and data for all reports submitted to EPA according to this CAFO. KT must provide the documentation of any underlying research and data to EPA within seven days of EPA's request for the information.
23. KT must submit a SEP completion report to EPA within 270 days of the effective date of this CAFO. This report must contain the following information:
- a. detailed description of the SEP as completed;
  - b. description of any operating problems and the actions taken to correct the problems;
  - c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
  - d. certification that KT has completed the SEP in compliance with this CAFO; and
  - e. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).
24. KT must submit all notices and reports required by this CAFO by first class mail to:
- Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

25. In each report that KT submits pursuant to this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

26. Following receipt of the SEP completion report described in paragraph 23 above, EPA must notify KT in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give KT 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 28.

27. If EPA exercises option 26b above, KT may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of KT's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give KT a written decision on its objection. KT will comply with any requirements that EPA imposes in its decision. If KT does not complete the SEP as required by EPA's decision, KT will

pay stipulated penalties to the United States under paragraph 28 below.

28. If KT violates any requirement of this CAFO relating to the SEP, it must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if KT did not complete the SEP satisfactorily pursuant to this CAFO, it must pay a stipulated penalty of \$65,362.50.
- b. If KT did not complete the SEP satisfactorily, but EPA determines that KT: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, it will not be liable for any stipulated penalty.
- c. If KT satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the SEP, it must pay a stipulated penalty of \$21,788.
- d. If KT failed to submit timely the SEP completion report required by paragraph 23 above, it must pay a stipulated penalty of \$1,000 for each day after the report was due until it submits the report.
- e. In no case will the total stipulated penalty exceed \$65,362.50.

29. EPA's determinations of whether KT satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will not be arbitrary and capricious and will bind KT.

30. KT must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. KT will

use the method of payment specified in paragraphs 10 and 11, above, and it will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

31. Any public statement that KT makes referring to the SEP must include the following language, "KT undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against KT for violations of 40 C.F.R. Part 63, Subpart T."
32. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:
  - a. KT must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), KT's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. KT must take all reasonable actions to avoid or minimize any delay. If KT fails to notify EPA according to this paragraph, KT will not receive an extension of time to complete the SEP.
  - b. If the parties agree that circumstances beyond the control of KT caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
  - c. If EPA does not agree that circumstances beyond the control of KT caused or may cause a delay in completing the SEP, EPA will notify KT in writing of its decision and any delays in completing the SEP will not be excused.
  - d. KT has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above.

Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

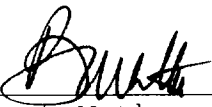
### **General Provisions**

33. This CAFO settles EPA's claims for civil penalties for the violations alleged in the complaint.
34. Nothing in this CAFO restricts EPA's authority to seek KT's compliance with the Act and other applicable laws and regulations.
35. This CAFO does not affect KT's responsibility to comply with the Act and other applicable federal, state and local laws and regulations.
36. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine KT's "full compliance history" pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e).
37. The terms of this CAFO bind KT, its successors, and assigns.
38. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.
39. Each party shall bear its own costs and fees in this action.
40. This CAFO constitutes the entire agreement between the parties.

41. The effective date of this CAFO shall be the latest date that this CAFO is signed by an authorized party.
42. This CAFO and the provisions contained therein shall terminate six years from the effective date of this CAFO.

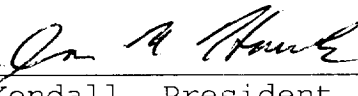
U.S. Environmental Protection  
Agency, Complainant

Date: 3/27/00

By:   
Bharat Mathur, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

K-T Corporation, Respondent

Date: 3/14/00

By:  for:  
Don Kendall, President  
K-T Corporation

**CONSENT AGREEMENT AND FINAL ORDER**

**K-T Corporation**

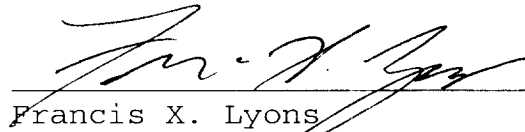
**Docket No.**

**Final Order**

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Date: \_\_\_\_\_

*3/28/00*



Francis X. Lyons  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

DEC 11 3 39 PM '92

I, Betty Williams, do hereby certify that the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois 60604 and that correct copies, were mailed first class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

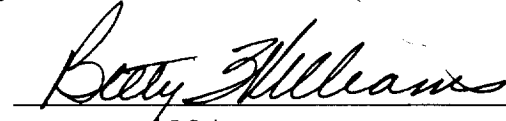
Don Kendall, President  
K-T Corporation  
850 Elston Drive  
Shelbyville, Indiana 46176

James M. Hauck  
Barnes & Thornburg  
11 South Meridian Street  
Indianapolis, Indiana 46204

I also certify that copies of the Consent Agreement and Final Order were sent by first class Mail to:

David McIver, Chief  
Air Section  
Office of Enforcement  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue, Room 1001  
Indianapolis, Indiana 46206-6015

on the 30<sup>th</sup> day of March, 2000.

  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 2199026399